kitchen was let to him on hire. The appellant may have been the "owner" of that part of the premises which was sub-let to Batcha, but there is no sufficient evidence that that part was used as a common gaming house, and nothing was found there to raise any presumption.

In my opinion, therefore, when the prosecution amended the charges there ceased to be on the evidence a case which the appellant could have been called upon to meet and he should have been acquitted without being called upon for his defence.

This being my view I cannot, strictly speaking, look at the evidence for the defence for the purpose of supplementing the evidence for the prosecution. Even if I did, however, I do not think the evidence given by the appellant really satisfies this point. He says in evidence referring to the cook :—

"He pays me $5 per month for using the kitchen."

In my opinion this does not constitute a letting for hire within the meaning of section 2(1) of the Ordinance. Taken in conjunction with the evidence of the cook it is at most a licence to use the kitchen at certain times of the day.

A further point taken on the appeal was that those parts of the evidence of Prosecution Witness No. 8 to the effect that this witness had placed bets with the appellant in No. 21 Church Street on numerous occasions prior to August, 1954 should not have been admitted. In the view I take of this case it is not necessary for me to decide this point.

For the reasons given above I am of opinion that the conviction upon the first charge as finally framed cannot stand. It remains to consider whether I could or should alter the charge or whether it would be proper for me to order a retrial.

I do not think I can uphold the conviction upon any altered charge. I am inclined to think myself that there was evidence upon which the learned Magistrate could have found that the appellant was an occupier of the premises and had the charge been one of actual user instead of permitting the presumption under section 19 of the Ordinance might have been raised and might have remained unrebutted. The appellant, however, has been acquitted on this charge and I cannot interfere with that acquittal even if I were inclined so to do.

I do not think it would be right to order a retrial in view of the fact that the prosecution have already amended the charges twice. Moreover, the prosecution evidence was far from being entirely satisfactory. The evidence of P. W. 4, as I have already remarked, was discredited and although I have not had the opportunity of seeing the witnesses, it appears to me from the record that the evidence of P.W. 8 was entitled to no better consideration than that of the appellant.

Before parting with the case I would like to point out how important it is for Magistrates in their grounds of decision not only to make specific findings of fact but also to give a clear indication of which witnesses they believed and which not. In his grounds of decision in this case the learned Magistrate said :—

"Coming again to the evidence of Rajah Mohamed can I draw the inference that, if in August, 1954, the accused had something to do with a common betting house he had something to do with a common betting house on the 9th April, 1955? I think I am permitted to do this under s. 114 of the Evidence Ordinance, 1950. I am quite aware that this is a presumption of fact and that it is rebuttable. It is not rebutted in this case."

The appellant in his evidence clearly and categorically denied the evidence of the witness Rajah Mohamed. Why then does the Magistrate say that the presumption is not rebutted? I can only assume that he accepted the evidence of Rajah Mohamed in preference to that of the appellant, but he has not so stated and has given no reasons for doing so. Whilst it is not always necessary to give reasons for believing or disbelieving a particular witness it is in my view highly desirable to do so where there is a definite conflict between two witnesses and no other evidence upon the point in respect of which they conflict.

The conviction on the first charge is quashed and as I have already quashed the conviction on the other charge the accused is acquitted and discharged.

Appeal allowed

MOHAMED HUSSAIN & ANOR. v. PAVADISE

[C. A. (Pretheroe Ag. C.J., Spenser Wilkinson and Buhagiar JJ.) November 21, 1955]

[K. L. — F.M. Civil Appeal No. 14 of 1955]

Courts Ordinance, 1948, ss. 36, 37 and 70(3) — Appeal to Court of Appeal — Jurisdiction — Whether amount or value of subject matter at the trial is less than $500 — Claim for possession of premises — Quantum of fact depending upon the credibility of witnesses — Whether appellate Court justified in overruling the decision of the trial Court.

Landlord and Tenant — Mode of assessing value to landlord of possession of his own house — Ejectment.

The appellants in this case claimed in the Sessions Court possession of certain premises upon the ground that the tenant had sublet the premises at rents which exceeded in the aggregate of 75% of the rent paid by the tenant to the landlord which was at the rate of $75.00 a month. They also claimed mesne profits. The President of the

Sessions Court found as a fact that the total rent received by the respondent at the material time was $96 per month and gave judgment for the appellants. On appeal from this judgment to the High Court the learned Judge held that there was not sufficient evidence to support the findings of the learned President and ordered a retrial. The appellant appealed to the Court of Appeal. At the hearing of the appeal counsel for the respondent raised the point that no appeal lay to the Court of Appeal because the value or amount of the subject matter was less than $500 and that the appellants had not obtained leave to appeal under s. 37 of the Courts Ordinance.

Held: (1) the value of the subject matter at the trial in this case exceeded $500 and therefore the appeal could be brought without leave; (2) on the facts, the learned Judge was not justified in overruling the decision of the Sessions Court upon a question of fact which depended on the credibility of witnesses and therefore the appeal must be allowed.

Cases referred to:—

(1) *Arieh Zvi Lipshitz v. Haim Aron Valero* (1948) A.C. 1.

(2) *Millett v. Ballard* (1904) 2 K.B. 593.

(3) *The King v. Judge Whitehorne* (1904) 1 K.B. 827.

(4) *Angel v. Jay* (1911) 1 K.B. 666.

(5) *Mohideen Hadjiar v. Pitchley* (1893) A.C. 193.

(6) *Mussumat Ameena Khatoon v. Radhabenod Misser* 7 Moo. Ind. App. 262.

(7) *Radhakrishna Ayyer v. Sundaraswamier* 49 I.A. 211.

(8) *Macfarlane v. Leclaire* (1862), 15 Moo P.C.C. 181.

(9) *Ajuas Kooer v. Luteefa* 18 W.R. 21.

COURT OF APPEAL.

C. H. Smith (*R. R. Chelliah* with him) for the appellants.

R. Ramani (*M. N. Cumarasami* with him) for the respondent.

Pretheroe J. : —I have had the advantage of reading the draft judgment prepared by Spenser Wilkinson J. in this appeal. I am in agreement with the conclusions he has reached on the preliminary objection and on the appeal itself and there is nothing that I can usefully add to his judgment.

The appeal therefore is allowed. The decision in the lower Court is set aside and that in the Sessions Court restored. Appellants will have their costs of this appeal and in the High Court and the deposit will be paid out to them.

Spenser Wilkinson J. : —The appellants claimed in the Sessions Court possession of certain premises upon the ground that the tenant had sub-let the premises at rents which exceeded in the aggregate 75% of the rent paid by the tenant to the landlord, which was at the rate of $75 per month. They also claimed mesne profits. The Sessions Court found as a fact that the total monthly rent received by the respondent at the material time was $96 and gave judgment for the appellants. On appeal from this judgment to the High Court the learned Judge held that there was not sufficient evidence to support the findings of the learned President and ordered a retrial.

At the hearing of the appeal before us Counsel for the respondent raised the point that no appeal lay to the Court of Appeal because the value or amount of the subject matter at the trial was less than $500 and that the appellants had not obtained leave to appeal under section 37 of the Courts Ordinance, 1948. I think it somewhat unfortunate that this point was taken only at the hearing of the appeal; it is not mentioned in the grounds contained in the Memorandum of Appeal filed in the appeal before us and there was very little evidence on the record upon which to base a decision as to the actual value of the subject matter at the trial. The point having been taken, however, and it being a matter of jurisdiction, it becomes necessary to come to the best conclusion one can upon the very scanty material available.

For the respondent it was argued that under the provisions of paragraph (a) of section 37(1) of the Courts Ordinance, 1948 no appeal lies to the Court of Appeal when the amount or value of the subject matter at the trial is less than $500, except with leave; that no such leave was obtained in the present case; and that the value of the subject matter was in fact less than $500. It was contended that the value of the subject matter for purposes of section 37 of the Ordinance is something other than the amount of the annual rent and that the subject matter here was the plaintiffs' right to possession.

The appellants on the other hand contended that where possession cases are concerned the proper manner of ascertaining the value of the subject matter is by taking the annual value in accordance with the provisions of sub-section (3) of section 70 of the Ordinance.

In my opinion the construction of the Ordinance contended for by Mr. Ramani on behalf of the respondent is the correct one. Section 70 of the Ordinance gives special jurisdiction to the Sessions Court to hear and determine actions for recovery of immovable property and then provides in sub-section (3) that such jurisdiction should not be exercised where the money claim exceeds the sum of $1,200, or where the rent payable by a tenant exceeds the sum of $1,200 per annum or $100 per mensem. In my view

this section deals solely with the jurisdiction of the Sessions Court to try the case. When it comes to an appeal from the Sessions Court to the High Court there is a limit laid down by section 50, which provides that an appeal shall lie where the amount in dispute or the "value of the subject matter" exceeds $100.

If an appeal is then brought from the High Court to the Court of Appeal then the governing sections are sections 36 and 37. I can see nothing in either of those sections or in section 50 to relate the expression "the value of the subject matter" with the provisions of sub-section (3) of section 70, which simply provide that the jurisdiction of Sessions Court in ejectment cases shall not be exercised in cases where the rent exceeds $1,200 per annum; and I can find nothing in the Ordinance to suggest any modification of the words "No appeal shall be brought to the Court of Appeal . . . . . when the amount or value of the subject matter at the trial is less than five hundred dollars, except with the leave of the Court of Appeal or a Judge".

What then is the amount or value of the subject matter at the trial in this case? There is very little authority with regard to this question but some assistance can, I think, be derived from the case of *Arieh Zvi Lipshitz v. Haim Aron Valero*[1]. That was a claim for possession of land leased on a monthly tenancy at a rent of £P.13.500 a month and on which the tenant had erected a building at a cost of £P.450. In delivering the judgment of the Privy Council Lord Normand said :—

". . . . . the true test under the article is whether it is worth £P. 500 to the appellant that the Rent Restriction Ordinance should be held to give him protection against an order to vacate the land leaving on it a building which cost £P. 450 to erect."

Applying this test the Supreme Court in that case held on appeal that the tenancy right amounted in value to £P.50 and the value of the building to £P.450. This view was upheld in the Privy Council.

It must be observed that the wording of the Privy Council rule on which that decision is based differs slightly from the wording of paragraph (a) of section 37(1) of our Ordinance. The wording in the relevant Order-in-Council is :—

"When the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards"

whereas the wording under our Ordinance is :—

"When the amount or value of the subject matter at the trial is less than $500".

The question then arises whether there is evidence upon which the Court of Appeal can in this case decide what the amount or value of the subject matter at the trial was, and if not, upon whom the burden lies of showing that the subject matter was more or less than $500. I do not think it is necessary to decide the question of burden, though I am inclined to think that the respondent having raised the objection it was for him to satisfy the Court of Appeal that the value of the subject matter was less than $500. In my opinion there is evidence on the record from which we can reasonably infer that the value of the subject matter in this case was more than $500.

There are various ways in which one might assess the value to a landlord of the possession of his own house. If, for example, it was shown that the landlord required the house for his own use and that whilst out of possession he had to pay a much larger rent elsewhere then the difference between the rent he was paying and the standard rent of the premises in question might be a guide to the value to the landlord of the right of possession. It might even be argued that the right to possession of premises of which the rent is $75 per month is the capitalised value of $75 per month. In the present case, however, another possible indication of value presents itself. The standard rent of the premises is $75 per month and the tenant was receiving $96 per month from his sub-tenants. Whether or not the rooms let to the sub-tenants were furnished does not appear, but I think it is clear that on regaining possession the landlord could sub-let parts of this house in such a way as to bring him in $96 per month so that on regaining possession of his own premises while he ceased to receive the $75 per month from the tenant he would instead be receiving $96 per month from the sub-tenants and would, therefore, gain financially to the extent of $21 per month. I think a right which results in a gain of $21 per month must be worth more than $500.

In my opinion, therefore, the value of the subject matter at the trial in this case exceeded $500 and the appeal, therefore, lies.

With regard to the appeal itself there was in my opinion ample evidence to justify the learned President of the Sessions Court in arriving at the conclusion which he did. Three witnesses gave evidence that $25 per month extra was paid as rent and the learned President appears to have accepted their evidence. In these circumstances I do not think that the learned Judge was justified in overruling the decision of the Sessions Court upon a question of fact which depended upon the credibility of the witnesses and I would, therefore, allow the appeal with costs.

Buhagiar J. : —I have had the advantage of reading the judgment of Spenser Wilkinson J., and I

agree with the conclusion at which he arrived both on the preliminary point as to jurisdiction and on the appeal itself. I would allow the appeal with costs; the decision of the lower Court is set aside and that of the Sessions Court restored. In view, however, of the difficulties which the matter presents, I would like to add a few remarks on the point as to jurisdiction. The determination of the amount or value of the subject matter at the trial is in most cases an easy matter; but in some cases, like the present, the subject-matter of a suit does not admit of being satisfactorily valued. In suits for the recovery of immovable property where the title is disputed or where the question of ownership thereof arises, I think there can be no doubt that the amount or value of the subject-matter at the trial is the value of the property. Is the same test to be adopted in suits for the recovery of immovable property where no question of title is involved? Section 120 of the County Courts Act, 1888 draws a distinction between actions of ejectment on title or actions in which the title to hereditaments is in question and actions for the recovery of small tenements which put in suit the rights of landlord and tenant; *Millett v. Bailard*[2] was a case dealing with that section, and it was held that under that section in the latter case there was no appeal without leave where the yearly rent or value of the premises did not exceed twenty pounds. (That section is now replaced by section 105 of the County Courts Act, 1944). The distinction between the title to property and interest in property was also to a certain extent recognised in *The King v. Judge Whitehorne*[3] and *Angel v. Jay*[4].

In the absence of specific statutory provisions we have to find and apply some method of valuation for the purposes of determining the question of jurisdiction.

Some assistance on this point may be derived from cases before the Judicial Committee of the Privy Council in which the question of appealable amount was considered. In *Mohideen Hadjiar v. Pitchley*[5] it was held that in an action for possession and mesne profits, the appealable amount was the value of the property and the mesne profits; the value of the property was also held to be the appealable amount in *Mussumat Ameena Khatoon v. Radhabenod Misser*[6]. In these cases, however, the question of title to the property was involved and are not, therefore, direct authority to determine the question in the circumstances of the case now before this Court.

It is hardly necessary to say that as pointed out by Lord Shaw of Dunfermline in *Radhakrishna Ayyer v. Sundaraswamier*[7], the sum of money actually at stake may not represent the true value; the proceeding may in many cases, such as a suit for an instalment of rent or under a contract raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit."

In *Macfarlane v. Leclaire*[8] it was held that in determining the question of the value of the matter in dispute, upon which the right of appeal depends, the correct course is to look at the judgment as it affects the interest of the party who is prejudiced by it and who seeks to relieve himself from it by an appeal. *Arieh Zvi Lipshitz v. Haim Aron Valero*[1] did not lay down a test for determining the value of a tenancy right; there it was not contested that the tenancy right amounted in value to *at least* £50. It seems to me, however, that the test applied by their Lordships in determining the appealable value was that laid down in *Macfarlane's case.*

I would like finally to refer to the case of *Ajuas Kooer v. Luteefa*[9]. This is an Indian case in which, for purposes of appeal to the Privy Council, it was necessary to ascertain the value of a right to water. Markby J., said (at p. 22):—

> "I think the matter at issue in this suit was, as regards Mr. Allan's clients, their right to have their lands irrigated in the way they claimed, and the value of that matter, as I have stated, is the extent to which their interests would be deteriorated if that right cannot be established."

Adopting this principle, it seems to me that in the present case the value of the appellant's property would be deteriorated to the extent of more than $500 if he failed to establish the right to recover possession of his property.

In my opinion, therefore, whatever test is applied to determine the amount or value of the subject matter at the trial, whether it is the value of the property or the annual value or rent of such property or the course laid down in the two Privy Council cases last mentioned, the appealable value in this case is more than $500.

Appeal allowed.

PUBLIC PROSECUTOR v. CHEW AH HOCK

[A. Cr. J. (Wilson J.) September 6, 1955]

[K. L. — Criminal Appeal No. 66 of 1955]

Prevention of Corruption Ordinance, 1950, s. 3(b) — Sentence — Inadequacy of sentence — Practice of addressing Court on question of sentence.

The accused held a Government contract to supply rice of a specified quality to the aborigines. On the 1st April, 1955 a Department of Aborigines' staff officer inspected the rice supplied and found it to be of inferior quality. He informed the accused that the matter would be reported. On the 9th April, 1955, the accused approached the staff officer and offered him an envelope saying that it was an Easter present of $200. The accused was charged and convicted of an offence under section 3(b) of the Prevention of Corruption Ordinance, No. 5 of 1950, and sentenced to a term of three months' imprisonment. The President in his judgment commented that "Apart from informing the Court that the accused had no previous convictions the prosecuting counsel had nothing to say with regard to sentence."

On appeal the sentence was increased to one of nine months' imprisonment. The mere fact that the prosecutor does not address the Court on the amount of the sentence is immaterial and the practice of asking for a specific sentence is not one which should be encouraged.

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Respondent in person.

Wilson J. : — This is an appeal by the Public Prosecutor against the sentence of three months' imprisonment imposed by the learned President in Kuala Lumpur Sessions Court Criminal Case No. 180 of 1955.

The respondent was sentenced to three months' imprisonment for an offence punishable under section 3(b) of the Prevention of Corruption Ordinance, 1950.

In my view, this was a bad case and the sentence was inadequate. The respondent had no previous conviction of any sort. If he had had a previous conviction for an offence of the same type, I do not doubt that he would have received a maximum sentence of imprisonment for this offence. The mere fact that the Public Prosecutor does not address the Court on a question of the amount of the sentence to be awarded is immaterial. For the prosecutor to do more than draw the attention of the Court to such facts as he considers material would, I consider, be improper. One is aware that on the Continent of Europe it is quite usual for a prosecutor to demand a specific sentence. Such a practice is not prevalent in England, and is certainly not allowed before Assize Courts and Quarter Sessions Courts. I do not think that such a practice should be encouraged here.

I accordingly varied the sentence to one of nine months' imprisonment.

Order accordingly.

CHOP KIM LEE SENG KEE v. YEO KIAT JIN

[C. A. (Whyatt C.J., Mathew C.J. (F.M.) and Taylor J.) November 18, 1955]

[Singapore — Civil Appeal No. 13 of 1955]

Defamation — Slander — Qualified privilege — Excessive publication — Malice.

The defendant in this case carried on business in Indonesia as a rubber exporter and he had employed the plaintiff for many years as his commission agent to sell on a 2% commission basis the rubber which he shipped from Indonesia to the Colony. On March 28, 1953 he shipped a consignment of 10 tons to the plaintiff from Rengat, a port in Indonesia by the S.S. Pulau Kidjang and he himself travelled as a passenger on the same ship. When the vessel called at Sapuah, the last port of call in Indonesia on March 29, 1953, the defendant went ashore and there heard from a business man of his acquaintance that the plaintiff had failed in business. When he returned on board, he said to the chief clerk and the tally clerk that he had heard that the plaintiff had failed. This was said in the presence of two sailors, members of the ship's crew. The plaintiff claimed damages for slander. The learned trial Judge dismissed the suit on the grounds that the occasion on which the slander was uttered was one of qualified privilege, and that there was no evidence of malice to defeat the privilege pleaded. The plaintiff appealed.

Held (by Mathew C.J. (F.M.) and Taylor J.): (1) no common interest had been established between the defendant-respondent and the two ship's clerks which made the occasion one of qualified privilege; (2) in any case even if publication to the clerks were defensible, publication to the sailors also was real and exceeded the privilege; (3) the learned Judge was wrong in holding that malice ought not to be inferred in the circumstances, as in fact the defendant's behaviour indicated strongly that he was actuated by malice..

Held (by Whyatt C.J.): the communication to the chief clerk and the tally clerk in this case was privileged but the communication to the sailors constituted excessive publication and was not protected by the law of privilege; (2) as the plaintiff himself has said in evidence that the defendant was not actuated by any improper motive, he had failed to prove that there was malice on the part of the defendant.

Cases referred to:—

(1) *Watt v. Longsdon* (1930) 1 K.B. 130.

(2) *Toogood v. Spyring* 1 C.M. & R. 181 at p. 193.

(3) *Smith v. Streatfield* (1913) 3 K.B. 764.

CIVIL APPEAL.

N. L. Macassey for the appellant.

T. W. Ong for the respondent.

Whyatt C.J. : — The questions for decision in this appeal are whether certain words imputing insolvency to the plaintiff which were spoken by the defendant on board the S.S. Pulau Kidjang on the 29th March 1953 were uttered on a privileged occasion and if they were, whether this privilege was lost by reason of excessive publication, or because of malice on the part of the defendant.